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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: John L. Gargiulo, et al.

Serial No.:   09/944,292

Filing Date: August 31, 2001

Art Unit: 2157

Confirmation No.:   1901

Examiner: Avi M. Gold

Title: *DISTRIBUTED NETWORK QUERY*

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("Request") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

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REMARKS

The Office Action mailed January 9, 2009 ("Office Action") finally rejects the claims of the present Application. The Office Action's rejections and assertions contain clear errors of law. Most notable of the legal errors in the examination of the present Application is a failure to establish a *prima facie* rejection of the claims, as shown below.

Section 103 Rejections

Claims 1-11, 13-15, 21-36, 38-40, 46, 47, and 49-52

The Office Action rejects Claims 1-11, 13-15, 21-36, 38-40, 46, 47, and 49-52 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,192,404 B1 issued to Hurst, et al. (*"Hurst"*) in view of U.S. Patent No. 5,253,252 issued to Tobol (*"Tobol"*). Applicants respectfully traverse the rejection.

The rejection of Claim 1 is improper because the *Hurst-Tobol* combination fails to teach, suggest, or disclose each element of Claim 1. For example, the *Hurst-Tobol* combination fails to teach, suggest, or disclose "receiving a query sent from a caller node, wherein...the query comprises a delay constant" as recited in Claim 1. The Office Action relies on *Hurst* for this aspect of Claim 1. (Office Action; p. 3). The cited portion of *Hurst* describes a method for using a TTL parameter value to determine the time-to-live (TTL) distances between a base node and other nodes in a network. (*Abstract*; col. 6, ll. 25-36). The Office Action seems to equate the TTL parameter value in *Hurst* with the "delay constant" in Claim 1. (Office Action; p. 3). This is improper, however, because the TTL parameter value in *Hurst* is not a "constant" but rather changes during transmission.

According to *Hurst*, the base node generates multiple query messages, and each query message comprises a different "TTL parameter value." (Col. 6, ll. 25-36). *Hurst* explains that a TTL parameter value may represent a number of network hops. (Col. 1, ll. 47-56). After generating the query messages, the base node multicasts the query messages over the network. Each time a particular query message is passed from one node to another, the TTL parameter value (e.g., network hop value) of that query message is decremented by one. (Col. 1, ll. 46-67; col. 2, ll. 1-18). *Hurst* explains that a particular query message is destroyed when its TTL parameter value falls to zero. (Col. 2, ll. 13-15). Because the TTL parameter value changes (e.g., decrements) as it passes from one node to another, the TTL parameter value in *Hurst* is not a "constant" as recited in Claim 1. Accordingly, *Hurst* fails to teach,

suggest, or disclose a query that comprises "a delay constant" as recited in Claim 1. *Tobol* fails to cure this deficiency of *Hurst*. Therefore, the rejection of Claim 1 is improper.

The *Hurst-Tobol* combination fails to teach, suggest, or disclose at least one other element of Claim 1 -- specifically, "calculating a delay period by at least multiplying the delay constant by at least a portion of a network address associated with the at least one node." The Office Action relies on *Tobol* for this element of Claim 1. (Office Action; p. 4). The cited portion of *Tobol* describes a procedure by which network devices may bid to become a bus master. (*Tobol*; col. 10, ll. 37-42). In particular, the cited portion of *Tobol* states:

> If the device which failed was the current bus master, then all remaining devices wait a period of time equal to (their device address plus three) multiplied by the maximum round trip delay time through the network multiplied by two. After waiting for this amount of time, the procedure for bidding to become a master is invoked.

Id. Thus, *Tobol* discloses "a period of time equal to (their device address plus three) multiplied by the maximum round trip delay time through the network multiplied by two." *Id.* The multiplication in *Tobol* does not teach, suggest, or disclose the multiplication recited in Claim 1. In particular, Claim 1 recites "multiplying the delay constant by at least a portion of a network address." Claim 1 further recites that "the delay constant" is comprised in the "query sent from a caller node." Thus, according to Claim 1, the "delay period" is calculated by at least multiplying the "delay constant" comprised in the "query sent from a caller node" by "at least a portion of a network address associated with the at least one node." The cited portion of *Tobol* does not teach, suggest, or disclose multiplying anything by a "delay constant" comprised in "a query sent from a caller node," as recited in Claim 1. The cited portion of *Hurst* fails to cure this deficiency of *Tobol*. Accordingly, the *Hurst-Tobol* combination fails to teach, suggest, or disclose "calculating a delay period by at least multiplying the delay constant by at least a portion of a network address associated with the at least one node" as recited in Claim 1. Because the *Hurst-Tobol* combination fails to teach, suggest, or disclose this element of Claim 1, the rejection is improper. For at least this reason, Applicants respectfully request reconsideration and allowance of Claim 1 and its dependents.

The Office Action rejects Claims 6, 21, 26, 31, 46-47, and 49-52 based on rationale that is similar to that used to reject Claim 1. Accordingly, for reasons analogous to those

stated above with respect to Claim 1, Applicants respectfully request reconsideration and allowance of Claims 6, 21, 26, 31, 46-47, and 49-52 and their respective dependents.

Claims 16, 18-20, 41-45, 48, 53, and 54

The Office Action rejects Claims 16, 18-20, 41-45, and 48 under 35 U.S.C. 103(a) as being unpatentable over *Hurst* in view of *Tobol*, U.S. Patent No. 5,471,461 issued to Engdahl, et al. (*"Engdahl"*), and U.S. Patent 6,791,981 B1 issued to Novaes (*"Novaes"*). The Office Action rejects Claims 53 and 54 under 35 U.S.C. 103(a) as being unpatentable over *Hurst* in view of *Tobol* and U.S. Patent 6,725,263 issued to Torres (*"Torres"*). Applicants traverse these rejections.

Claim 16 is allowable because the cited references fail to teach, suggest, or disclose each claim element. For reasons analogous to those stated above with respect to Claim 1, *Hurst* and *Tobol* fail to teach, suggest, or disclose the "delay constant" or the "delay period calculated by at least multiplying the delay constant by at least a portion of a network address associated with the node" as recited in Claim 16. This deficiency of *Hurst* and *Tobol* is not cured by the cited portions of *Engdahl*, *Novaes*, or *Torres*. Because the cited references fail to teach, suggest, or disclose each element of Claim 16, Applicants respectfully request reconsideration and allowance of Claim 16 and its dependents.
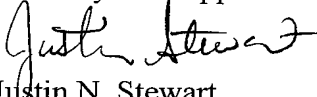
In rejecting Claims 41 and 48, the Office Action employs the same rationale used to reject Claim 16. Accordingly, for at least the reason stated above with respect to Claim 16, Applicants respectfully request reconsideration and allowance of Claims 41 and 48 and their respective dependents.

CONCLUSION

As the rejections of Claims 1-11, 13-16, 18-36, and 38-54 contain clear legal and factual deficiencies, Applicants respectfully request full allowance of all pending claims. The Commissioner is hereby authorized to charge the $540.00 Notice of Appeal Fee and to charge any other necessary fees or to credit any overpayments, to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: April 9, 2009

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